IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3770 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

ADAMALI MAMAD NODE

Appearance:

1. Special Civil Application No. 3770 of 1988
MR HARDIK C RAWAL for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/08/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 19.9.1987 passed by the Labour Court, Rajkot in Reference LCR No. 1273 of 1984 whereby the Labour Court set aside the order of dismissal passed against the respondent-conductor and directed the

petitioner-Corporation to grant fresh appointment to the respondent but without continuity of service and without backwages. The order of fresh appointment was to be granted within one month from the date of publication of the award failing which the respondent-workman was declared to be entitled to get wages for the said period i.e. from the date of expiry of one month from the date of publication of the award till the date of appointment.

2. The respondent-workman was employed as a Conductor in the services of the petitioner-Corporation. Departmental inquiry was held against him on the ground that on 8.9.1971 when he was discharging his duties as a conductor on the bus plying from Bhuj to Suthri, the bus was checked by the checking squad and in connection with the said incident, the respondent-workman was charged for the following acts of misconduct :-

(i) The respondent-workman had collected Rs.2.50 ps. from 10 passengers, but the respondent had not punched those tickets. Thus, the workman had misappropriated the amount.

(ii) Out of those 10 passengers, 7 passengers had run away and 3 passengers were detained.

(iii) It was after getting down from the bus when stopped by the checking party, that the workman had posted entries about the tickets in the way bill.

(iv) When the checking party officer called upon the workman to give his statement, the workman attacked the checking officer and attacked the passengers.

3. At the departmental inquiry held by the Inquiry Officer and which findings were accepted by the Disciplinary Authority, the workman was held to have committed the aforesaid acts of misconduct. Resultantly the workman came to be dismissed by the order on 22.10.1971. The workman preferred departmental appeal which came to be dismissed. The second appeal also came to be dismissed on 28.4.1972. However, the workman raised the industrial dispute in the year 1984. The reference came to be allowed by the impugned judgment and award of the Labour Court, Rajkot.

4. The Labour Court held that the only charge for which there was material to hold that the workman was guilty of any misconduct was the charge that the workman

had not issued tickets to 10 passengers. The charge of misappropriation of money and assaulting the checking officer were not believed. Thus, the Labour Court came to the conclusion that the only charge proved against the workman was that he had not issued tickets to 10 passengers. Looking to the nature of the misconduct proved, the Labour Court held that the penalty of dismissal was too harsh and disproportionate and, therefore, by the impugned award, the Labour Court directed the petitioner-Corporation to give fresh appointment to the respondent-workman without any backwages and without any continuity of service. The reason which weighed with the Labour Court for denying backwages as well as continuity of service was that the workman has raised the industrial dispute after a delay of 12 years from the date of dismissal of the departmental appeals.

5. While issuing rule on this petition, this Court had granted interim stay against execution and implementation of the impugned award on condition that the petitioner-Corporation follows the requirements of Section 17B of the Industrial Disputes Act, 1947.

6. Mr Hardik Raval, learned counsel for the petitioner states that after the aforesaid interim order was granted by this Court on 16.8.1988, the petitioner Corporation thought it fit not to pay idle wages to the respondent-workman and, therefore, the respondent-workman was granted fresh appointment in compliance with the award of the Labour Court without prejudice to the rights and contentions of the Corporation.

7. At the hearing of this petition, Mr Raval has raised the following contentions :-

(i) When the petitioner's departmental appeals were dismissed in 1972, the Labour Court ought not to have entertained the reference on merits when the industrial dispute was raised after about 12 years from the date of dismissal of appeals.

(ii) On merits also, the Labour Court erred in interfering with the findings given by the Disciplinary Authority and confirmed by the appellate authorities that the respondent-workman had committed misconduct.

(iii) In any view of the matter, the Labour Court erred in directing the Corporation to pay the workman wages for the period from the date of expiry of

one month from the date of publication of the award till the date the respondent-workman was granted fresh appointment.

8. Though served, none appears of the respondent workman.

9. As far as the first ground of challenge is concerned, there is considerable substance in the contention raised by Mr Raval for the Corporation and the Court would have considered the same and might have been inclined to interfere with the award of the Labour Court on that ground alone, but for the fact that 13 years have elapsed since the present petition was filed. The respondent workman was granted fresh appointment pursuant to the award of the Labour Court. Allowing this petition at this stage would mean that the respondent's services shall be brought to an end at the fag end of his career and would be denied all the retiral benefits only on the ground of the proved misconduct which was nothing more than negligence on the part of the respondent workman in not issuing tickets of twenty five paise to 10 passengers. At the time when the respondent workman gave evidence before the Labour Court, he was aged about 35 to 40 years. By now, therefore, the respondent workman must be of the age of 50 to 55 years. In this view of the matter, the Court is not inclined to disturb the award of the Labour Court passed in 1987 only on the ground that there was delay of about 12 years in raising the industrial dispute after the dismissal of the departmental appeal.

10. As far as the second ground of challenge is concerned, since the findings given by the Labour Court is on questions of fact, this Court would not interfere with the impugned award in this petition under Article 226 or 227 of the Constitution. What Mr Raval, learned counsel for the petitioner is seeking to do is to persuade the Court to reappreciate the findings given by the Labour Court so as to enable the Court to come to a different conclusion. Since it is not within the limited jurisdiction of this Court under Article 226 or 227 of the Constitution, this Court does not propose to reappreciate the evidence. Accordingly, on the basis of the findings given by the Labour Court, the further view of the Labour Court that the penalty of dismissal was too harsh and disproportionate will have to be accepted and, therefore, no fault can be found with the award of the Labour Court directing the Corporation to give the respondent workman fresh employment. The very fact that the Labour Court has not awarded backwages or continuity

of service to the respondent workman clearly indicates proper application of mind on the part of the Labour Court both on the question of delay in raising the industrial dispute and also on the question of proportionality of punishment.

11. As far as the third ground of challenge is concerned, although the award on the face of it cannot be said to be illegal, the fact remains that the petitioner Corporation is a statutory Corporation which was bound to take some time to follow the normal procedure for taking a decision whether the impugned award in question should be challenged before this Court. The Labour Court pronounced the award on 19.9.1987. Although the date of publication of the award is not on the record, it is reasonable to expect that the award would have been published some time in October/November, 1987. The present petition came to be filed before this Court on 30.3.1988. This Court issued notice and issued Rule in August, 1988 and in September/October, 1988, the respondent workman came to be granted fresh employment notwithstanding the interim stay granted by this Court in favour of the petitioner-Corporation, because the petitioner Corporation had rightly decided not to pay the respondent workman idle wages. In this view of the matter, it cannot be said that there was unreasonable delay on the part of the petitioner Corporation in not granting the respondent workman fresh employment within one month from the date of publication of the award of the Labour Court. In the peculiar facts and circumstances of the case, the Court accepts the prayer made on behalf of the petitioner Corporation and, therefore, that part of the award of the Labour Court by which the petitioner Corporation was directed to pay the respondent workman wages for the period between the date of expiry of one month from the date of publication of the award and the date of grant of fresh employment is hereby quashed and set aside. However, the impugned award of the Labour Court in so far as the same directed the petitioner Corporation to grant fresh employment to the respondent workman is not disturbed.

12. Subject to the aforesaid modification, the petition is dismissed. Rule is discharged.

(M.S. Shah, J.)
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